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GB/MV/kd/D(2013)1207 **C 2013-0235**
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Subject: Opinion on the notification for prior checking from the Data Protection Officer of the European Ombudsman on PERSEO

Dear Mr Diamandouros,

On 21 March 2013, the European Data Protection Supervisor ("EDPS") received from the Data Protection Officer ("DPO") of the **European Ombudsman** a notification for prior checking concerning Perseo, the software for managing leaves developed by the European Ombudsman ICT team.

The European Ombudsman already notified on 27 February 2007 his processing operation in the context of Perseo (case 2007-0134). This led to the adoption on 7 May 2007 of an EDPS opinion and to the closing of this case on 20 January 2010. In order to align the existing procedure with the Guidelines in the area of leave and flexitime which were adopted on 20 December 2012, the European Ombudsman has updated his notification.

Following a preliminary analysis of the notification on 25 March 2013, the EDPS requested further information on a newly connected processing operation mentioned in the Perseo notification and called "Rodeo"[1] at the European Ombudsman. The EDPS received the corresponding notification on 30 April 2013.

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[1] Rodeo stands for "Registration of documents of the European Ombudsman", and is the internal application which, among other things, facilitates the assignment of correspondence (not related to complaints and inquiries) within the office. The DPO of the European Ombudsman was notified of this processing operation on 16 April 2013. The purpose is to enable the relevant EO staff to decide whether and how non-complaint-related documents

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The purpose of the Perseo processing operations is to manage annual leave, special leave as well as absences and over-time of the staff and trainees of the European Ombudsman. Following the review of the procedure by the European Ombudsman, it also has now the purpose of facilitating the allocation of tasks by informing line managers of the presence/absence of staff members.

The DPO sent this notification to the EDPS following the adoption on 20 December 2012 of the Guidelines on Leave and Flexitime (the "Guidelines") and before the deadline given to EU institutions and bodies to submit their notification (end of March 2013). The EDPS sent the draft for comments on 6 June 2013 and these were received on 10 June 2013.

As regards the processing in the area of flexitime, the DPO informed the EDPS that at the time of analysis, a notification Article 25 has been submitted to the DPO regarding the processing of requests for authorisation to work in accordance with the European Ombudsman's flexitime scheme.

Moreover, the notification states that Perseo will be replaced by Sysper2 in 2014.

Legal aspects

This Opinion deals with the already existing leave procedures at the European Ombudsman. It is based on the Guidelines, which allows the EDPS to focus on the European Ombudsman practices that do not seem to be compliant with the Guidelines and the principles of Regulation n. 45/2001.

The main change in the processing operation since the EDPS Opinion in case 2007-0134 is that data regarding presence/absence from work, without indication of the reasons, is made available to the staff of the European Ombudsman in the form of a calendar on the intranet.

Moreover, a link has been established between the Perseo application and the Rodeo one to inform line managers if the member of their team to whom they wish to assign the correspondence is absent (without an indication of the reason). The notification covering the Rodeo processing operation states that the information to which access is provided in Rodeo does not go beyond what is already available to all staff through the Perseo Calendar.

The EDPS notes that Article 27.2(c) could in this case also be applicable as regards the link that will now be provided for between the two systems of Perseo and Rodeo. This basis for prior-checking was also underlined in the updated Perseo notification of the European Ombudsman. The EDPS would like to underline that such interlinking should not lead to the consequence of processing of personal data which would go beyond the purposes which have been described. This would require adjustments of the content of both notifications.

The notification also states that Article 27(2)(d) of the Regulation applies because the processing involve operations which allow to verify the reality of certain facts invoked to request special leave or invalidity. However, as already stated in his Opinion in case 2007-0134, the EDPS considers that the processing operation does not have as its purpose to exclude a person from a benefit, right or contract. Therefore, Article 27(2)(d) does not apply in this case, as it did not apply in case 2007-0134.

-which may include personal data- should be included in the EO's (future) online public register. The processing operation secondarily serves the purposes of better record keeping internally and assigning tasks within the office.

As regards the information and the procedures to grant rights of the data subjects, the notification makes reference to the privacy statements of Perseo which is available on the user interface of Perseo. The EDPS would like that the information about the link between Perseo and Rodeo be provided to the staff, possibly through an update on the privacy statement of Perseo.

Conclusion

In view of the above, the EDPS recommends that the European Ombudsman:
1- amends the information provided in the privacy statement as explained above;
2- ensures in the procedure that the interlinking of processing operations between Perseo and Rodeo remains limited to the purposes described.

The EDPS would like to invite the European Ombudsman to inform him about the implementation of these recommendations within three months after receipt of this letter.

(**signed**)

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Cc: Ms Rosita Agnew, Data Protection Officer, The European Ombudsman